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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 69

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,
Petitioners,

v.

JACKSONVILLE TERMINAL COMPANY, *Respondent.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,
Petitioners,

v.

JACKSONVILLE TERMINAL COMPANY, *Respondent.*

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APPENDIX A

The Final Decree Dated July 29, 1966, of the Florida Circuit Court of the Fourth Judicial Circuit, In and For Duval County, is as Follows:

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA. IN CHANCERY

CASE No. 66-2941-E DIVISION "B"

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Bolin, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and the members of said organization,

Defendants.

FINAL DECREE

THIS CAUSE came on this day to be heard after due notice upon the plaintiff's application for a permanent injunction against the defendants, BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood, and the members of said organization; ORDER OF RAIL-

WAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership, and T. C. Bolin, individually and as an official of said brotherhood, and the members of said organization; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership; and the members of said organization, having been previously heard on May 28th and 29th, 1966, on plaintiff's application for temporary injunction which, after consideration by the Court, was entered May 30th, 1966, against each of the above named defendants.

The Court has reviewed the testimony at the proceeding for temporary injunction, the briefs of the respective parties filed herein, and has considered the Stipulation filed herein by the parties July 29, 1966, as well as additional documentary evidence filed on behalf of both plaintiff and defendants.

The Court, having considered the argument of counsel and being advised in the premises, makes the following findings of fact and conclusion of law:

1. Plaintiff, Jacksonville Terminal Company ("Terminal Company"), is a private corporation organized and existing under the laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates a passenger station, yards, tracks, buildings and equipment; and provides passenger, freight and switching services for the Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, the Georgia Southern and Florida Railway Company, the Southern Railway Company, the Florida East Coast Railway Company and many industries and businesses of Duval County, Florida. The plaintiff and the other named rail carriers are all "employers" subject to the Railway Labor Act. Plaintiff also employs its

own officers and employees who are responsible for the day-to-day operation of Terminal Company and has a separate labor agreement with the defendant Brotherhood of Railroad Trainmen covering Terminal Company employees only. There is no dispute under this agreement between Terminal Company and Brotherhood of Railroad Trainmen for which that defendant seeks to picket the premises of Terminal Company and said agreement remains in full force and effect. The other named labor organizations do not represent any employees on the property of Terminal Company and have no dispute with plaintiff.

2. The defendants Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen are all unincorporated labor organizations whose memberships are composed predominantly and overwhelmingly of employees of employers subject to the Railway Labor Act and are engaged primarily in representing such employees concerning labor disputes, rates of pay and working conditions in the railway industry.

3 The defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen, and by his own admission is in charge of promoting the acts and things hereinafter enjoined. The defendants Lowell Kennedy and T. C. Bolin, individually and as officials of the defendant brotherhoods, together with the membership of said brotherhoods, have participated in active concert with the defendant Ray Moore.

4. This action arises under the Constitution and laws of the State of Florida and this Court has jurisdiction of the subject matter and of the parties hereto.

5. On May 4, 1966, at or about 4:00 a.m., the defendant Brotherhood of Railroad Trainmen established picket lines at numerous locations surrounding the premises of plaintiff

so that said premises were effectively cut off from all rail movement. Said pickets patrolled at all entrances and exits by rail, foot or vehicle and resulted in a substantial cessation of the activities and business of Terminal Company and caused the employees of said Terminal Company to fail to report to work. All defendants have announced their intention to cause such picketing and patrolling of the premises of plaintiff to be renewed unless this injunction issue, or unless the defendants are otherwise enjoined.

6. All of the persons picketing the premises of Terminal Company on May 4, 1966, were members of local lodges composed solely of employees of employers subject to the Railway Labor Act. All pickets were employees of the Florida East Coast Railway Company, an employer subject to the Railway Labor Act.

7. Counsel for defendants announced at the beginning of taking of evidence in this case and the Court finds that if the picketing was resumed as threatened, it would result in a virtual cessation of activities not only of the Terminal Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida. The picketing, if resumed, would adversely affect all of the people who are served by and do business with plaintiff and all railways served by the plaintiff. It would, further, adversely affect an entire economic area, from Duval County to Key West, Florida, and would cause economic strangulation of the entire state. The announced purpose of the picketing is to cause the plaintiff and its employees to cease furnishing services to the Florida East Coast Railway Company (FEC), against whom the defendant brotherhoods are now on strike, and thus to bring the operations of the FEC to a halt; the effect of the picketing is considerably more broad, as above stated.

8. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

9. The Court concludes that the past and threatened picketing as described above is in violation of the law of the State of Florida and that this Court has the jurisdiction to enjoin the threatened picketing on that basis. The past and threatened picketing seeks to coerce plaintiff into embargoing the FEC in violation of the Restraint of Trade Laws of this State, Chapter 542, Florida Statutes. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. §§ 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees. Plaintiff has been and will be subjected to irreparable injury for which no adequate remedy at law exists. It is, therefore,

ORDERED AND DECREED that the defendants, Brotherhood of Railroad Trainmen, Ray Moore, Lowell Kennedy, Order of Railway Conductors and Brakemen, T. C. Bolin, and Brotherhood of Locomotive Firemen and Enginemen, individually, and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with either the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, or the Brotherhood of Locomotive Firemen and Enginemen, and all persons receiving notice of any such orders of the Court, are permanently enjoined and restrained from:

(a) Picketing the properties owned or operated by plaintiff in Jacksonville, Duval County, Florida, except at the

reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(b) Causing, directing, authorizing, recommending, sanctioning, or participating in the patrolling, picketing, or blockading of the entrances or exits used by the employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property operated, owned or controlled by plaintiff; PROVIDED, HOWEVER, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(c) Causing or inducing the employees of plaintiff who report for work at the Terminal Company to cease performing the duties of their employment;

(d) Interfering in any way with the operation of plaintiff's properties by plaintiff.

(e) This injunction is limited to the picketing of plaintiff's premises by the defendants arising out of defendants existing disputes with the Florida East Coast Railway Company.

It is FURTHER ORDERED and DECREED that the plaintiff, Terminal Company, a corporation, and its surety, Federal Insurance Company, a corporation, be and they hereby are released and discharged from any and all further liability under the bond heretofore filed herein in the amount of $25,000.00 and said bond be and it hereby is cancelled and rendered null and void.

DONE and ORDERED in Chambers at Jacksonville, Duval County, Florida, this 29 day of July, A. D. 1966.

/s/ ROGER J. WAYBRIGHT
Circuit Judge.

APPENDIX B

The Opinion and Judgment of the District Court of Appeal, First District, State of Florida, Rendered July 18, 1967, and Reported at 201 So. 2d 253, is as Follows:

IN THE DISTRICT COURT OF APPEAL FIRST DISTRICT,
STATE OF FLORIDA

July Term, A. D. 1967.

Case No. I-233.

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, a labor organization, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization, RAY MOORE, an individual, LOWELL KENNEDY, an individual and T. C. BOLIN, an individual, *Appellants,*

v.

JACKSONVILLE TERMINAL COMPANY, *Appellee.*

Not Final Until Time Expires to File Rehearing Petition And Disposition Thereof If Filed.

Opinion filed July 18, 1967.
(reported at 201 So. 2d 253)

An Appeal from the Circuit Court for Duval County.

ROGER J. WAYBRIGHT, *Judge.*

RICHARD HORN of RUTLEDGE & MILLEDGE, for Appellants.

MCCARTHY, ADAMS & FOOTE; ROGERS, TOWERS, BAILEY, JONES & GAY; and COX, GRISSETT & WEBB, for Appellee.

PER CURIAM

The question of jurisdiction of the State court over the matter involved herein having been for all practical purposes determined by this court in its refusal to issue a writ of prohibition against the circuit judge hearing this

case, and a refusal of the United States District Court to grant removal thereof to Federal court, and it appearing that the trial court exercised a proper authority in enjoining a violation of a valid state statute,[1] the order appealed from is hereby Affirmed.

WIGGINTON, *Chief Judge*, JOHNSON and SPECTOR, *JJ.*, concur.

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[1] Radio Corporation of America v. Local 780, 160 So. 2d 150 (Fla. App. 2d, 1964), cert. denied 380 U.S. 973 (1965).

APPENDIX C

The Order of the Supreme Court of Florida Dated November 7, 1967, and Reported at 207 So. 2d 458, Dismissing Appeal is as Follows:

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1967

Tuesday, November 7, 1967
(reported at 207 So. 2d 456)

Case No. 36,712

BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL.,
Appellants,

v.

JACKSONVILLE TERMINAL COMPANY, *Appellee.*

Upon consideration of appellee's motion to dismiss appeal it is ordered that said motion be and the same is hereby granted and it is ordered that the appeal be and is hereby dismissed.

A True Copy

TEST:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

CC: Hon. Raymond E. Rhodes
Hon. S. Morgan Slaughter
Messrs. McCarthy, Adams & Foote
Messrs. Rogers, Towers, Bailey, Jones and Gay
Hon. Neal P. Rutledge; Hon. Eleanor L. Schockett
Messrs. Horton & Schwartz

APPENDIX D

The Order of the Supreme Court of Florida Dated January 30, 1968, and Not yet Reported, Denying the Petition for Writ of Certiorari is as Follows:

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1968

Tuesday, January 30, 1968

Case No. 36,713

BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL.,
Petitioners,

v.

JACKSONVILLE TERMINAL COMPANY, *Respondent.*

District Court of Appeal, First District

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

CC: Hon. Raymond E. Rhodes
Hon. S. Morgan Slaughter
Hon. Neal P. Rutledge; Hon. Eleanor L. Schockett
Messrs. Horton & Schwartz
Messrs. McCarthy, Adams & Foote
Messrs. Rogers, Towers, Bailey, Jones & Gay
Messrs. Cox & Webb

APPENDIX E

The Unreported Order of the District Court of Appeal, First District, State of Florida, Dated June 8, 1966, and Denying a Suggestion for Writ of Prohibition, is as Follows:

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1966

Case No. I-7

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ET AL., *Petitioners*,

v.

HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida; and JACKSONVILLE TERMINAL COMPANY, a Florida corporation, *Respondents*.

ORDER

Suggestion for writ of prohibition having been considered,

IT IS ORDERED that said suggestion fails to make out a prima facie case upon which Rule Nisi could issue. Said suggestion is hereby denied.

WITNESS the Honorable John S. Rawls, Chief Judge, and Seal of the Court, this 8th day of June, A. D. 1966.

RAYMOND E. RHODES
Clerk

A True Copy

ATTEST:

GRACE M. PENN
Deputy Clerk First District Court of Appeal, Tallahassee, Florida

APPENDIX F

The Order of the U. S. Supreme Court Dated November 7, 1966, 385 U.S. 935, Denying a Petition for Writ of Certiorari To Review the Order of the District Court of Appeal, First District, State of Florida, in the Prohibition Proceedings, is as Follows:

385 U.S. 935

BROTHERHOOD OF RAILROAD TRAINMEN ET AL., *Petitioners*,

v.

JACKSONVILLE TERMINAL COMPANY ET AL. No. 244.

Neal Rutledge and Allan Milledge, for petitioners,

Paul A. Porter, Abe Krash, Dennis G. Lyons and Daniel A. Rezneck, for respondent Jacksonville Terminal Co.

Petition for writ of certiorari to the District Court of Appeal of Florida, First District.

Nov. 7, 1966. Denied.

Mr. Justice FORTAS took no part in the consideration or decision of this petition.

APPENDIX G

The Order for Preliminary Injunction of the U. S. District Court, Middle District, Florida, in the Companion Case No. 66-357-Civ-J, Filed May 10, 1966, is as Follows:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 66-357-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, *Plaintiffs,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and LOWELL KENNEDY, individually, and as an official of said Brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. BOLAND, individually, and as an official of said ORDER; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN and ENGINEMEN, an unincorporated association in its own right and as representative of its membership, and J. E. EASON, individually and as an official of said Brotherhood; and the members of said organization, *Defendants.*

ORDER FOR PRELIMINARY INJUNCTION

Upon consideration of the application by plaintiffs, Atlantic Coast Line Railroad Company, Jacksonville Terminal Company and Seaboard Air Line Railroad Company for a preliminary injunction, and upon plaintiffs' verified Complaint for injunction and upon evidence introduced at

the hearing and upon arguments submitted by all parties, the Court makes the following findings of fact and conclusions of law after hearing, with due notice, on May 9, 1966:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiffs are common carriers engaged in the transportation of passengers and property by railroad and each is a connecting line with the other, within the meaning and application of the Interstate Commerce Act, 49 U.S.C. § 1.

2. Defendants are unincorporated labor unions, individuals who are members and officers of the defendant labor unions and the members of the defendant labor unions.

3. Since April 24, 1966, all of the defendant unions have been on strike against the Florida East Coast Railway Company. That strike has not been resolved.

4. During the early morning hours of May 4, 1966, defendant Brotherhood of Railroad Trainmen and its officers and members began to picket the premises of plaintiff Jacksonville Terminal Company at numerous places. Defendants Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen have made threats to engage in similar conduct.

5. The picketing in question consisted of carrying placards to the effect that the Brotherhood of Railroad Trainmen is on strike against the Florida East Coast Railway Company. The placards requested that other railroad men not cross the picket lines.

6. As a result of the picketing, hundreds of employees of the plaintiffs refused to report for work and did not report for work until the picket lines were removed as a result of entry of a temporary restraining order at 4:30 o'clock P.M. on Wednesday, May 4, 1966.

7. Plaintiff Jacksonville Terminal Company owns and operates a rail terminal, rail interchange, and the only passenger station located in Jacksonville, Florida. Jack-

sonville Terminal Company serves the government of the United States under mail contract, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railroad Company, the Southern Railway Company, the Georgia, Southern & Florida Railway Company, the Florida East Coast Railway Company and numerous shippers whose facilities are located adjacent to property of Jacksonville Terminal Company. The bulk of mail entering and leaving the State of Florida is handled in and processed by Jacksonville Terminal Company. All passenger service of Atlantic Coast Line Railroad Company entering and leaving the State of Florida passes through Jacksonville Terminal Company. All of the passenger traffic of Seaboard Air Line Railroad Company coming into Jacksonville, Florida, and substantially all of the freight traffic of Seaboard Air Line Railroad Company coming into and leaving Duval County, Florida, is serviced by Jacksonville Terminal Company facilities.

8. The threatened activities of defendants, unless restrained, will cause incalculable damage upon innocent parties other than plaintiffs, in that most of the Atlantic Coast Line passenger service into or out of the State of Florida will be eliminated; most of the passenger traffic of Seaboard Air Line Railroad Company into and out of the City of Jacksonville, Florida, will be eliminated; most of the freight traffic of Atlantic Coast Line Railroad Company into and out of the State of Florida and substantially all of the freight traffic of Seaboard Air Line Railroad Company into and out of Duval County, Florida, will be eliminated—all to the great detriment of the general public; that the transportation and processing of the mails into and out of the State of Florida will be severely obstructed and hampered; that many rail passengers will be prevented from traveling by rail; and that military bases served by plaintiffs will be adversely affected.

9. The prohibitions of the Norris-LaGuardia Act, 29 U.S.C. § 104, are not applicable to the instant proceeding

and do not deprive the Court of jurisdiction to enter the preliminary injunction sought by plaintiffs herein.

10. Plaintiffs have been subjected to irreparable injury for which no adequate remedy at law exists.

11. A preliminary injunction is necessary to restore the parties to the positions and conditions existing prior to the commission of the acts of the defendants and to maintain those conditions during the pendency of this action and until final determination of the controversy herein.

Upon consideration, it is

ORDERED AND DECREED, until further Order of this Court:

1. That defendants, their officers, agents, servants, employees, representatives, attorneys, members and all of the persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of this Order, be and they are hereby enjoined from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or descriptions, used by the employees of the plaintiffs in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by plaintiffs; provided, however, that the present order shall not apply to the gate located at Bay and Stuart Streets designated for use by Florida East Coast Railway Company employees;

(b) Causing, compelling or inducing the employees of the plaintiffs to cease performing the duties of their employment in connection with the operation of the various plaintiffs, particularly with respect to the transportation of passengers or to the receiving, transportation and handling of goods of any shipper, receiver or common carrier, or causing, compelling or inducing the plaintiffs or their employees or representatives to fail to provide facilities for the transportation of property belonging to any shipper,

receiver, or common carrier, or to fail to carry, transmit or deliver the United States mail, or to fail to provide transportation for passengers, or causing, compelling or inducing the plaintiffs or their employees to fail to perform their obligations as required by law;

(c) Causing, compelling and inducing the plaintiffs, or their employees or representatives, to fail to perform any of their lawful duties, including the operation of locomotives, cars, or trains, or to interfere in any way with the delivery, loading, unloading, dispatch or movement of any of plaintiffs' rolling stock, engines, cars, equipment or trains or any of the contents or any of the passengers thereof;

(d) Interfering with employees of plaintiffs in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiffs who refuse a lawful order to perform services for plaintiffs in connection with any collective bargaining agreement covering said services in, on, or about plaintiffs' facilities, or supporting in any way any employee of plaintiffs who refuses to obey a lawful order or request to perform such services.

2. This Writ of Injunction shall be effective at twelve o'clock noon, May 10, 1966, upon the furnishing of a bond in the amount of $25,000.00.

3. Jurisdiction of this cause is retained by the Court for the purpose of making final disposition of the controversy herein.

DONE AND ORDERED at Jacksonville, Florida, this 10th day of May, 1966.

/s/ WM. A. MCRAE, JR.
Wm. A. McRae, Jr.
Judge

Copies to counsel

APPENDIX H

The Decision and Opinion of the U. S. Court of Appeals, Fifth Cir., in the Companion Case of Brotherhood of R. Trainmen v. Atlantic Coast Line R. Co., 362 F. 2d 649 (1966), is as Follows:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23659

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Appellants*,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., *Appellees*.

Appeal from the United States District Court for the Middle District of Florida.

(June 15, 1966.)
(reported at 362 F.2d 649)

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and CHOATE, District Judge.

TUTTLE, Chief Judge: The appellant-Brotherhood and the Florida East Coast Railroad (hereinafter, "FEC") have been involved in a prolonged labor controversy, more fully described by this court at 336 F.2d 172 (see also 348 F.2d 682), centering around the company's attempt, in 1963, to institute certain changes in the collective bargaining agreement. While this court held that changes reasonably necessary to enable FEC to continue to operate could be made, the railroad, at the same time, was prohibited from effectuating other deviations until the proper statutory procedures had been exhausted, 336 F.2d at 182; see .... U.S. ...., 34 L W 4415, affirming 348 F.2d 682. For our purposes this "exhaustion" process has been fully followed to no avail, and the parties now are relegated to self-help in attempting to resolve their differences, see *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U.S. 284, 291 (1963). This latter context provides the setting for the present litigation.

Thus, dipping into its economic arsenal, the FEC completely revised the rules, rates of pay and working conditions contained in existing collective agreements with employees in the crafts of trainmen, yardmen, conductors and hostlers, thereby implementing most of the changes which it had attempted to institute in 1963. The appellant Brotherhoods retaliated by striking the FEC on April 24, 1966, and subsequently, on May 4, 1966, union members commenced peacefully picketing the premises of the Jacksonville Terminal Company (hereinafter "Terminal Company"), in an attempt to appeal to the appellees' employees to cease providing certain services, whatever they might be, for the FEC. These services include the following: (a) one-third of all freight interchange service performed by the Terminal Company; (b) minor repairs and maintenance on FEC cars and locomotives; (c) track maintenance, signaling and switching services; plus (d) whatever additional service may be contemplated in the definition of "car service" found in 49 U.S.C. Section 1(10). Since the relationship of the Terminal Company to the disputants bears substantially upon this case, it must be described before we proceed to the merits.

The appellee-Terminal Company is a Florida corporation, the stock of which is owned in equal shares by the Atlantic Coast Line (hereinafter, "ACL"), Seaboard Air Lines (hereinafter, "SAL"), FEC and Southern Railroads. It owns and operates a rail terminal, rail yards, interchange facilities and the only passenger station located in Duval County, Florida, and provides passenger, freight and mail service for the state of Florida by furnishing connecting services to the above four railroads, as well as to the Georgia Southern and Florida Railway. The Terminal Company has its own officers and employees, who work under separate collective bargaining agreements negotiated between it and the respective unions which represent its employees. However, despite the legal separateness of the Terminal Company's entity and operation, it cannot be

disputed that the facilities and services provided by the Terminal Company *in fact* constitute an integral part of the day-to-day operations of the FEC, which continues to operate both passenger and freight trains by means of its own striker replacement crews.

At this point, in order more fully to set out the factual stage for this case, it must be noted that the Terminal Company employees allegedly perform such work and services for the FEC pursuant to the terms of a preliminary injunction entered by the lower court on January 30, 1963, in case No. 63-16-Civil J, *Florida East Coast R. Co.* v. *Jacksonville Terminal Co., et al.* This latter injunction was obtained by the FEC in order to assure that its operations would not be disrupted by the threatened work stoppage by Terminal Company employees, in response to the threatened picketing of the Terminal Company's premises by striking FEC employees. The asserted bases for the issuance of said injunction were (a) defendants' violation of FEC's rights under an "Operating and Guaranty Agreement" between FEC, Terminal Company, ACL, SAL, Southern and Georgia Southern and Florida, and (b) defendants' refusal to perform duties owed FEC under the Interstate Commerce Act. Although the lower court's order specifically purported to bind the employees of both the defendant Terminal Company and the Railroad defendants, the court denied an application by the union representatives of said employees to intervene in an attempt to dissolve this injunction. The preliminary injunction issued in said Case No. 63-16 remains in effect at this time. It was not appealed, since the brotherhoods were not permitted to intervene, and thus there was no aggrieved party. The plaintiffs-appellees in the instant case contend that if this court stays the injunction entered below, they will be forced, through no fault of their own, to violate the outstanding injunction entered in Case No. 63-16.

Appellants' picketing of appellees' premises can be described as peaceful and effective. The picketing was not

limited to the gate allegedly "designated" for entrance and exit of FEC employees; rather, it covered substantially the entire Terminal Company premises, as well as other contiguous sites in Duval County which were under the sole control and operation of the ACL and SAL. As a result of the picketing, hundreds of appellees' employees refused to work. However, the temporary restraining order entered by the lower court in this action caused the pickets to be removed approximately thirteen hours after the time of their commencement.

The specific purpose of the appellants' picketing in this case is highlighted by the testimony of Mr. Raymond C. Moore, Deputy President, Brotherhood of Railroad Trainmen, given at the Preliminary Injunction hearing, to the effect that if the Terminal Company "cease to provide services . . . for the FEC and cease to handle movement of FEC trains on its property," the pickets would be removed.

Attempting to translate this factual description of appellant's activities into labor jargon for purposes of legal analysis, this was an attempt, through peaceful picketing, to elicit a secondary boycott of the FEC by the appellee-companies, which depended for its success upon the aid of appellees' employees in refusing to cross appellants' picket lines [Perhaps appellants' activity could be more simply described as an attempt to elicit a "secondary *labor* boycott" on the part of appellees' employees.].

Appellants maintain that the provisions of the Norris-LaGuardia Act, 29 U.S.C. Section 101 *et seq.* deprive the district court of jurisdiction to enjoin the picketing here involved. The District Court, without elaborating, held that the Norris-LaGuardia prohibition was "not applicable to the instant proceedings . . ." and enjoined the picketing, presumably upon the basis that it unlawfully interferred with legal obligations which the appellees owed the FEC by virtue of (a) the Operating and Guaranty

Agreement; (b) the Interstate Commerce Act; and (c) the injunction previously entered in Case No. 63-16.

The applicable sections of Norris-LaGuardia provide as follows:

Section 4 (29 U.S.C. Section 104):

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

. . . .

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

. . . .

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified."

Section 13 (29 U.S.C. Section 113):

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations

of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer or employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. Mar. 23, 1932, c. 90, § 13, 47 Stat. 73."

In light of the history underlying the passage of this Act,[1] especially the unions' prior unsuccessful attempt, in

[1] An excellent discussion of the events leading up to and culminating in the passage of Norris-LaGuardia is contained in Gregory, *Labor and the Law*, 158-199 (2d Rev. ed. 1961).

Sections 6 and 20 of the Clayton Act (38 Stat. 731 and 738), to remove the federal courts from the injunction granting business in a similarly described context,[2] we are not surprised to find a paucity of decisions dealing directly with the question of whether so-called "secondary boycott" activity of employees and unions may be within the protection of Norris-LaGuardia. Like Justice Frankfurter, reputedly the author of the Act, we would have assumed that the jurisdictional limitations of Norris-LaGuardia apply to secondary boycotts, see *Bakery Sales Drivers Union* v. *Wagshal*, 333 U.S. 437, 442, 444 (1948); *Amalgamated Ass'n of Street, Electric Ry. & Motor Coach Employees* v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 (8

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[2] This prior effort was rendered abortive by the Supreme Court in Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921), which involved an attempt by an international union to unionize a non-union printing press company. Although the non-union factory in question was located in Michigan, the union exerted pressure, not directly upon the factory, but rather, upon its customers and their employees. The means of exerting said pressure may be described legally as a "secondary *labor boycott*"—members of the union refusing to work on the company's presses where they were installed or to work for anyone who used them—to be distinguished from the instant case, where the pressure upon the "secondary employees" was initiated by striking employees of the "primary employer," FEC. The Supreme Court held that the anti-injunction provisions of § 20 of the Clayton Act could be invoked only by employees "who are proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of *their own* employment . . ." (Emphasis added) and only in the context of "particular industrial controversies, not a general class war." 254 U.S. at 472.

In a strong dissent, Justice Brandeis (joined by Justices Holmes and Clarke) concluded that in the Clayton Act Congress had declared "the right of industrial combatants to push their struggle to the limits of the justification of self-interest," 254 U.S. 488, and he articulated the interest of a union in the terms and conditions of employment prevailing in non-union plants in the same industry, according to the better-reasoned common law decisions, *id.* at 480-83.

Cir., 1948). However, since there appears to be no authoritative Supreme Court holding to this effect and since the contrary proposition was so forcefully argued by appellees, we proceed to examine the merits of this question. Before passing, it should be emphasized that we here deal only with the enjoinability of appellants' activity and not with its legality for any other purpose.[3]

At first blush, giving the terms of the Act their literal meaning,[4] this appears to be a "case involving or growing out of a labor dispute" (Section 4, 29 U.S.C.A. Section 104), since it "involves persons who are engaged in the same industry, trade, craft, or occupation" (Section 13, 29 U.S.C.A. Section 113). Accordingly, a literal reading of the Act would prevent any federal court from issuing an injunction "to prohibit any person or persons participating or interested in such dispute . . . from . . . giving publicity to the existence of, or the facts involved in, any labor dispute . . . by advertising . . . patrolling, or by any other method not involving fraud or violence" (Section 4, 29 U.S.C.A. Section 104). The surface appeal of this literal construction of the Act is reinforced by the view that in such a common industry context the responses of employees of the secondary employer are not totally sympathetic, but rather, are motivated partially by the self-interest of the responding employees. Such self interest may be said to lie in their hope that in help-

[3] In Norris-LaGuardia, Congress did not, as it had done in the Clayton Act, make the conduct listed lawful for all purposes. The most logical inference from this fact is that in Norris-LaGuardia Congress intended only to remedy abuses of judicial equity power relating to injunctions, allowing the law relating to the "legality" of the described activity for other purposes to develop in the courts.

[4] Of course, this court is not required to accept this literal construction, under the "familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of the makers." NLRB v. Fruit & Vegetable Packers, etc., 377 U.S. 58, 72 (1964). (quoting from Holy Trinity Church v. United States, 143 U.S. 457, 459).

ing to further the bargaining position of their "brothers," they are, at the same time, strengthening their own future position."[5]

On the facts here, however, the court is not forced to rely upon this literal construction of the Act in holding that Norris-LaGuardia is applicable, since the union's position finds even stronger support when measured according to traditional economic self-interest justification concepts, which we hold are applicable to determine the intended scope of Norris-LaGuardia protection. Although there does not appear to be direct Supreme Court authority for this latter proposition, we find it to be implicit in Justice Brandeis' dissent in the *Duplex* case (see note 2, *supra*) together with the subsequent passage of Norris-LaGuardia.[6]

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[5] Of course, this same argument also would apply to the situation where the only link between the picketing union and the responding employees is the "brotherhood" they share as members of the organized labor movement, whenever the ultimate result would be to strengthen unionism as a whole. Without attempting to decide exactly where Congress intended to draw the line of Norris-LaGuardia protection, we nevertheless note that the interest shared by organized labor is much more remote than the common industrial interest shared by the employees in this case. Nor does the interest shared by organized labor come within a literal reading of the Act, as does the common industrial interest.

[6] Implicit support for this holding also may be found in New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552, 562-63 (1938). (Norris-LaGuardia passed to overcome qualifying effects of Duplex decision). And cf. Carpenters & Joiners Union v. Ritter's Cafe, 315 U.S. 722, 724-28 (1942); United States v. Hutcheson, 312 U.S. 219, 231-36 (1941). These latter two cases support the proposition that the proper framework for a Norris-LaGuardia "labor dispute" falls substantially short of an all-out class war, unrelated to fairly direct economic interests of the disputants.

In the words of Professor Charles O. Gregory:

> "It is as if Congress had said in [the Norris-LaGuardia] act:
>
> > 'This you may do, using the techniques we have suggested, as long as you can show that your union economic pro-

As we see it, this "economic self-interest" test, by definition, must be primarily a factual inquiry. In this case the picketing union, allegedly attempting to limit the scope of its appeal to its dispute with FEC,[7] had an obvious interest in putting a stop to the Terminal Company's performing services related to the normal, day-to-day operation of FEC trains—operating with striker replacement crews.[8] A similar interest is present in any case in which a labor group attempts to bring secondary pressure upon the employer with whom its primary dispute exists by means of exerting primary pressure upon a secondary employer, who has aligned himself with the primary employer in some substantial manner—here by providing certain esential services and facilities to the primary employer, FEC.[9]

Turning next to a further examination of the economic interests of the responding employees of the secondary employer-appellees, it should be emphasized that their

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gram, conceived as you and not anyone else sees it, is affected by the existing employment conditions in the units of the industry with which you are concerned. We have instructed the judges to withhold the use of the injunction against your self-help coercive activities directed along these lines. From now on it is up to you union people to promote your own economic interests, as you see them, within the area of conflict we have defined.'"

Gregory, *Labor and the Law*, 192 (2d Rev. ed. 1961).

[7] The picket signs bore the following:

"Fellow Railroad Men
Do Not Cross or Assist FEC
B of R T on Legal Strike Against FEC
Please Make Common Cause With Us
In Major Dispute Against FEC".

[8] Compare United Steelworkers v. NLRB, 376 U.S. 492 (1964).

[9] Compare NLRB v. Fruit & Vegetable Packers, etc., 377 U.S. 58 (1964) (substantial alignment present) with Carpenter's & Joiners' Union v. Ritter's Cafe, 315 U.S. 722 (1942) (no alignment at all).

interests go beyond the "common industrial interest" discussed above. It can be stated unequivocally that Seaboard and FEC are in direct competition for passenger and freight traffic south of West Palm Beach. As far as the ACL and FEC are concerned, the competition, although less direct, cannot be said to be non-existent, especially between Jacksonville and a line drawn from Orlando to the Atlantic Ocean. The significance of this competition lies in the fact that the FEC, by changing work rules[10] and lowering wages, presents a direct threat to the job security of the employees of SAL and ACL.[11] In other words, by operating under such lower than union standards of employment, the FEC enjoys a competitive advantage, which may enable it to increase its share of traffic, vis a vis, ACL and SAL, and, consequently, the latter two railroads could be forced either (a) lower their standards or (b) lay off a sufficient number of employees to compensate for their reduced traffic share. Accordingly, it is improper to regard the responses of ACL and SAL employees as merely sympathetic.

Thus, it is clear that the economic self-interest test is met here from not one, but two, viewpoints: (a) the economic interests of the defendant-picketers themselves, and (b) the economic interests of the responding employees of the secondary employers, without whose aid the picketing would be ineffectual. Accordingly, the district court was prohibited from issuing the injunction by Norris-LaGuardia.

One final point: Appellees argue that under the circumstances of this case Norris-LaGuardia should be "accommodated" to the Interstate Commerce Act and the

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[10] The changes here severely reduced the number of employees needed for daily operations, by eliminating what the FEC considered to be unnecessary employees.

[11] In this limited sense, at least, the case is substantially similar to, and probably controlled by, Marine Cooks & Stewards v. Panama Steamship Co., 362 U.S. 365 (1960).

Railway Labor Act, so that (a) appellees' duty to the public under the former act can be carried out and (b) the national railway labor policy expressed in the latter, given effect. We deem the argument based upon the Railway Labor Act to be without substance. Regarding the argument based upon the Interstate Commerce Act, the short answer is found in *Railroad Telegraphers* v. *Chicago & North Western Ry.*, 362 U.S. 330, 339 at note 15, where the Court cited "cases to show that unlawfulness under nonlabor legislation did not remove the restrictions of the Norris-LaGuardia Act upon the jurisdiction of federal courts." [12]

Since the district court was without jurisdiction to enjoin the picketing involved in the case, the judgment is REVERSED, and the case is REMANDED to the district court with directions to vacate the injunction.

CHOATE, Senior District Judge (Dissenting):

The issue before this court is whether a United States District Court has jurisdiction to enjoin railroad employees engaged in a labor dispute with their employer, which is not a party to this litigation, from interfering with the business and the legal duties[1] of carriers and other persons in the railroad industry with whom those employees have no labor dispute.

If the use of the court's injunctive powers is not forbidden by the Norris-LaGuardia Act §§ 4, 13, 47 Stat. 70,

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[12] See also Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry., 346 F. 2d 673, 676-77 (5 Cir., 1965).

[1] Duties concerning car service and interchange of traffic are imposed upon appellees under: the Interstate Commerce Act, 49 U.S.C. §§ 1, 3 (1952 ed.); Operating and Guaranty Agreement authorized and approved by the Interstate Commerce Commission and by United States District Court for the Southern District of Florida; and the injunction (Case No. 63-16) referred to in the opinion.

73 (1932), 29 U.S.C. §§ 104, 113, the court below had jurisdiction to issue an injunction. See 28 U.S.C. §§ 1331, 1337; *Florida E. C. Ry.* v. *Jacksonville Terminal Co.*, 328 F.2d 720 (5th Cir. 1964); *Lakefront Dock & R.R. Terminal Co.* v. *International Longshoremen's Ass'n*, 333 F.2d 549 (6th Cir. 1962); *Toledo, P. & W. R.R.* v. *Brotherhood of R.R. Trainmen*, 132 F.2d 265 (7th Cir. 1943). Stated in Norris-LaGuardia terms, the issue is: whether this action is between persons involved in a labor dispute or; whether the subject matter of the litigation involves or grows out of a labor dispute in which appellants and appellees are participating or interested.

I would hold that the court below had jurisdiction to issue the injunction, since there is no labor dispute *between these parties*, nor does the subject matter of this case "involve" or "grow out of" any *labor dispute*.

Substituting the definition of "labor dispute," provided by § 13(c) of the act (29 U.S.C. § 113[c]), where appropriate in section 4 (29 U.S.C. § 104), the statute provides:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any controversy concerning terms or conditions of employment, or concerning the association, or representation of persons in negotiating [etc.] . . . terms or conditions of employment,[2] regardless of whether or not the disputants stand in the proximate relation of employer and employee.

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[2] It is instructive to note that the definition of "labor dispute" as originally presented to each house included, at the point indicated above, a controversy "concerning employment relations, or any other controversy arising out of the respective interest of employer and employee." That phrase, which might support the finding of a "labor dispute" in the case at bar, was stricken from what is now section 13(3). 75 Cong. Rec. 5008 (1932) (Senate); *Id.* at 5510 (House of Representatives).

There is no controversy or even disagreement between appellees and appellants concerning terms or conditions of employment, or employee representation. No labor demands have been made on appellees, and at no relevant time has there existed any labor dispute of any nature between appellees and the striking-picketing employees of FEC or their unions, or between the appellees and their employees. The plain meaning of the statute does not give an anti-injunctive shield to one group of railroad employees, who are engaged in an unresolved labor controversy with their employer over terms and conditions of employment, when they unilaterally carry that controversy over to non-involved rail facilities.

The last phrase in the definition of labor dispute in section 13 (c), "regardless of whether or not the disputants stand in the proximate relation of employer or employee," was inserted into the Norris-LaGuardia Act as a direct result of the holding in *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921), which construed the Clayton Act to withhold protection from labor unions that had no contractual relationship with the employer in question, and which, by their nature, could not be employees. A primary purpose of Congress in passing the Norris-LaGuardia Act was to broaden the definition of "dispute" so that the labor organization could act for employees by picketing an employer without being subject to injunction. 75 Cong. Rec. 4916 (1932) (remarks of Senator Wagner); *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 20 F. Supp. 767, 771 (W. D. Mo. 1937). See also 75 Cong. Rec. 5489 (1932) (remarks of Congressman Celler concerning *Dail-Overland Co.* v. *Willys-Overland, Inc.*, 263 Fed. 171, 192 [N.D. Ohio 1920] [wherein strikers were held to be no longer "employees" under the Clayton Act]). It is clear that ". . . the statutory classifications, however broad, of parties and circumstances to which a 'labor dispute' may relate does not expand the application of the Act to include controversies upon which the employer-

employee relationship has no bearing." *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143, 146 (1942).

Subsection (a) of section 13 (29 U.S.C. § 113[a]) defines the relationships of "persons" who may be parties to a "case" which arises out of a "labor dispute." To take section 13(a) *alone* as a definition of "case involving or growing out of a labor dispute," without regard to section 13(c) would be a patently incorrect approach to the interpretation of the statute here involved. Such a construction leads to the indefensible result that appellant-brotherhoods can picket and close down any terminal anywhere in the nation through which an FEC car passes. Merely because all parties to this action are either railroad employers or railroad unions and thus admittedly "engaged in the same industry," does not justify the blind conclusion that they are therefore persons involved in a labor dispute or that *any* case to which they are parties grows out or or involves a labor dispute.

> "'If any intelligent meaning is to be gathered from section 13, it is necessary that the several provisions of the section be read together, although gramatically its parts are independent. . . . [I]t is clear that the definition of 'labor dispute' given in subdivision (c) must be read into subdivisions (a) and (b). There cannot then be a 'labor dispute' unless there is a controversy between the disputants either 'concerning terms or conditions of employment' or concerning the 'association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.'" *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 20 F. Supp. 767, 770 (W.D. Mo. 1937).[3]

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[3] In *Marine Cooks* v. *Panama S.S. Co.*, 362 U.S. 365, 370 (1960), the court necessarily checked the status of the litigants and found, that the controversy did involve and was between persons who were engaged in the same industry. The court used the precise language

My brothers on the bench "would have assumed" that secondary boycotts are within the anti-injunction protection of the act, but nevertheless stated that they would examine the question. Propounding the rather uncertain economic self-interest test, they concluded that the test was met from two viewpoints—that of defendant-picketers and that of the "responding empolyees of the secondary employers." However, it does not appear that appellants in the case have conflicting or competing interests"[4] in any labor dispute.

The court readily appreciates that appellee-railroads and FEC compete against each other in the market for freight and passenger customers. The logical evaluation of that competition, in basic terms of economic self-interests, supports the conclusion that appellees, FEC's competitor railroads, would be benefited if affected at all by appellants' prevailing over FEC. Hardly can appellee-rail-

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of section 13(e) (which sets forth the requisites of "controversy") in direct connection with the precise language of section 13(a) (which defines "case").

Marine Cooks cannot be authority for appellants' contention that a person who is not involved in or interested in the labor dispute is nevertheless barred by Norris-LaGuardia from obtaining an injunction to protect his business. The plaintiffs in *Marine Cooks* were the very persons who were primarily responsible for setting the wages and working conditions over which the dispute arose. This case goes no further than to hold that there may be a non-enjoinable labor dispute between an employer and a union (not the representative of the employer's employees) which is designed to bring pressure on the employer to change wages and working conditions of his employees. That case does not even relate to a situation wherein a non-disputant is picketed for the purpose of compelling that non-disputant to cease doing business with the employer of the pickets.

[4] Terminal Company is a separately operated Florida corporation, in which FEC is a minority stockholder. With the exception of some very minor passenger ticket service (½ of 1%), all services presently furnished to FEC by the Terminal Company, are mandatory under the Interstate Commerce Act.

roads' interest be said to be aligned against its competitor's adversary.

> "And 'persons' must be involved on *both* sides of the case, or the conflicting interests of 'persons' on both sides of the dispute." *United States* v. *United Mine Workers*, 330 U.S. 258, 275 (1947) (Emphasis supplied.)

The "economic self-interests" of appellee's employees (not parties to this suit), upon which the court bases one of its viewpoints, is a finding not supported by the record—a conclusion that FEC operates at lower than union standards of employment. It has not been established that FEC's employees' working conditions are any better or worse than ACL's or SAL's. Can it be said that Congress intended to change the usual legal definition of a labor case by granting members of a very small union the right to use coercive methods directly against an innocent party who is helpless to give the laborers relief? Such a construction of the act would bring about inequitable results, and in the absence of clearly compelling language, should not be made. *Gomez* v. *United Office Workers*, 73 F. Supp. 679, 682 (D.C. Dist. 1947).

It should not be lightly assumed that Congress intended to embrace secondary boycott activity within the jurisdictional limitations of Norris-LaGuardia.[5]

The consistent theme reflected by the history of the act's passage in both houses is the statement and re-statement by the lawmakers to the effect that the "bill does nothing more or less than put into actual effect what the Congress did years ago when they passed the Clayton Act"; that the act under consideration was necessary to save the Clayton Act from judicial misconstruction. *E.g.*, 75 Cong. Rec. 5479, 5486, 5488, 5490 (1932). "There is not an underlying

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[5] The Supreme Court has not ruled on the central issues here involved. However, in *Bakery Sales Drivers* v. *Wagshal*, 333 U.S. 437 (1947), a secondary boycott was involved and the Court held that no labor dispute existed.

principle written into this bill which Congress did not enact into law back in 1914, when the Clayton Act was passed." *Id.* at 5478 (remarks of Congressman LaGuardia).

In passing the Clayton Act, Congress had no intention of going so far as to allow the secondary boycott. Congressman Webb, who conducted the bill through the House, made the following remarks on the question of whether the bill would legalize the secondary boycott:

> "[T]his section was drawn . . . with the careful purpose not to legalize the secondary boycott, and we do not think it does. . . . and it is not intended to do so." 51 Cong. Rec. 9652 (1914).
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> This section "was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House . . . and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott." *Id.* at 9653.
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> "I should vote for the amendment offered . . . if I were not perfectly satisified that it is taken care of in this section [§ 20]. The language the gentleman reads does not authorize the secondary boycott and he could not torture it into any such meaning. . . . I say again —and I speak for, I believe, practically every member of the Judiciary Committee—that if this section did legalize the secondary boycott, there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it. We confine the boycotting to the parties to the dispute. . . ." *Id.* at 9658.

The abuses[6] under the Clayton Act which Congress sought to remedy by Norris-LaGuardia did not involve injunctions

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[6] Those abuses concerned "yellow dog contracts," ex parte injunctions, and sweeping injunctions against unnamed and unknown persons. *E. g.*, 75 Cong. Rec. 5488, 5489, 5491 (1932) (debates in the House of Representatives); 75 Cong. Rec. 4504-4506 (1932) (debates in the Senate).

in secondary boycott situations especially those which might profoundly affect interstate commerce operations.

A protracted discussion in the House of Representatives centered around the contention that the limitation of injunctions provision would interfere with transportation in interstate commerce and Mr. LaGuardia's assurances that no such results would follow.[7]

The extreme and harmful consequences of the construction of Norris-LaGuardia adopted by this court are not to be ignored. In appellant's own words:

> "The unleashing of the parties to engage in economic warfare has serious consequences to third parties to the dispute and to the public. . . . Interference with the mails, with the shipment of perishables and vital

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[7] Question by Mr. Lankford of Virginia: "Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?"

Mr. LaGuardia: "[T]he railroad labor act . . . takes care of the whole labor situation pertaining to the railroads. They could not possibly come under this for the reason that we provided the machinery there for settling labor disputes."

Mr. Lankford: "It [Norris-LaGuardia bill] does not apply to the transportation of . . . necessities that go in interstate commerce?"

Mr. LaGuardia: "Interstate traffic is entirely covered in the railroad labor act of 1926." 75 Cong. Rec. 5499 (1932). To the same effect, see pages 5478, 5504.

Other Congressmen argued in favor of specifically excluding the anti-injunction provisions "where a labor dispute involves the obstruction of any instrumentality of interstate commerce." *Id.* at 5503. The amendment was rejected and the bill passed after the following remarks by Mr. LaGuardia:

> "[T]he present bill refers only to disputes between employees and employer. The amendment offered . . . brings in the . . . provision for which there is adequate law and which it is not intended to repeal by the provisions of this bill. This is limited to matters between employees and employers." *Ibid.*

materials is the inevitable result when an impasse is reached. It is the aim of the striking organizations (appellants) to cause FEC operations to cease. . . . . To accomplish this aim, the organizations have picketed wherever the FEC operates and have requested those persons who perform services for the FEC to cease performing such services." Brief of Appellants, pp. 7-8 (filed May 23, 1966).

Since appellee's yard lies astride of the northeast entrance to the Florida peninsula, manifestly the halting of the Terminal Company operations will: stop daily shipments of great quanities of baggage, express, freight, fresh vegetables, citrus, phosphate rock and other commodities in interstate commerce into and from Florida through Terminal Company facilities; eliminate all carriage and processing of United States mail by rail into the State of Florida, which is estimated to represent approximately 95 per cent of all mail coming into and carried from Florida; blockade ACL and SAL passenger service, consisting of 42 trains per day; block practically all ACL freight service to important seaport docking facilities and to the peninsula as a whole; obstruct freight service to military installations in Florida, including ACL and SAL traffic destined for the Cape Kennedy complex.

The Norris-LaGuardia Act should not have been interpreted as applicable to the type of situation presented by the instant case.

I would affirm the court below.

APPENDIX I

The Per Curiam Order and Judgment of the U. S. Supreme Court in the Companion Case of Atlantic Coast Line R. Co. v. Brotherhood of R. Trainmen, 385 U.S. 20 (1966), is as Follows:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

ATLANTIC COAST LINE R. CO. ET AL. v. BROTHERHOOD OF RAILWAY TRAINMEN ET AL.

On Writ of Certiorari to The United States Court of Appeals for The Fifth Circuit.

No. 220 Decided October 24, 1966.

(reported at 385 U.S. 20)

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

APPENDIX J

United States Constitutional Provisions Involved

1. Commerce Clause, Article I, Section 8, Constitution of the United States:

> "Section 8. The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; * * *."

2. Supremacy Clause, Article VI, Paragraph 2, Constitution of the United States:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

3. First Amendment, Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

4. Fourteenth Amendment, Constitution of the United States:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX K

The Railway Labor Act

The text of the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§ 151 *et seq.*, is as follows:

"DEFINITIONS

"SECTION 1. When used in this Act and for the purposes of this Act—

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which opeates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carirer': *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'carrier' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"Second. The term 'Adjustment Board' means the National Railroad Adjustment Board created by this Act.

"Third. The term 'Mediation Board' means the National Mediation Board created by this Act.—

"Fourth. The term 'commerce' means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

"Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard rail-

road locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"Sixth. The term 'representative' means any person or persons, labor union, organization, or corporation designated either by carrier or group of carriers or by its or their employees, to act for it or them.

"Seventh. The term 'district court' includes the United States District Court for the District of Columbia; and the term 'court of appeals' includes the United States Court of Appeals of the District of Columbia.

"This Act may be cited as the 'Railway Labor Act'.

"GENERAL PURPOSES

"Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to com-

merce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct

from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreements (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirement of this Act, it shall be the duty of the Mediation Board, upon requests of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In

the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration

of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provision in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent.

Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote

of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the District in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United

States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

"NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $15,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provision of law applicable

thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1949, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for sal-

aries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [*sic*] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to abritration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act,

no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so asknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, ex-

cept such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days afer the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

"PROCEDURE IN CHANGING RATES OF PAY, RULES, AND WORKING CONDITIONS

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and palce for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

"ARBITRATION

"SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

"Second. Such board of arbitration shall be chosen in the following manner:

"(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

"(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

"Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Board of Mediation; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

"(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

"(c). Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the recon-

vening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

"Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

"(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

"(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

"(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said

board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award, shall be filed in the office of the Interstate Commerce Commission: *Provided however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

"(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

"Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

"(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of

any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

"Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

"SEC. 8. The agreement to arbitrate—

"(a) Shall be in writing;

"(b) Shall stipulate that the arbitration is had under the provisions of this Act;

"(c) Shall state whether the board of arbitration is to consist of three or of six members;

"(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Board of Mediation, and, when so acknowledged, shall be filed in the office of the Board of Mediation;

"(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

"(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to

that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

"(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

"(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

"(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided,* That the parties may agree at any time upon an extension of this period;

"(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

"(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

"(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

"(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to

a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

"(n) Shall provide that the respective parties to the award will each faithfully execute the same.

"The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

"SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

"Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

"(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such

awards, or that the proceedings were not substantially in conformity with this Act;

"(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

"(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

"Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

"Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

"Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

"Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

"Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

"EMERGENCY BOARD

"SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of

the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

"There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"GENERAL PROVISIONS

"SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act."

APPENDIX L

The Norris-LaGuardia Act

The text of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following defini-

tions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

"SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

"Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

"(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

"(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of

any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

"SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

"SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful

acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

"SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been

threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

"The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

"SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by

negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

"SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

"SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

[Sections 11 & 12 have been repealed, c. 645, § 21, 62 Stat. 862 (1948)]

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more

employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District Columbia.

"SEC. 14. If any provision of this Act or the application thereof to any person or circumstances is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

"Sec. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

APPENDIX M

The Clayton Act

The text of Sections 6 and 20 of the Clayton Act, 38 Stat. 731 (1914), 38 Stat. 738 (1914), 15 U.S.C. 17, 29 U.S.C. 52, is as follows:

1. *Section 6 of The Clayton Act,* 38 Stat. 731, 15 U.S.C. 17:

> "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

2. *Section 20 of The Clayton Act,* 38 Stat. 738, 29 U.S.C. 52:

> "Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between persons employed and persons seeking employment, involving or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.
>
> "And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any

place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

APPENDIX N

The National Labor Relations Act, as Amended by the Labor Management Relations Act, as Amended

Sections 2 and 8(b)(4) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 61 Stat. 140 (1947), as amended, 29 U.S.C. 152 and 158(b)(4), are as follows:

DEFINITIONS

"SEC. 2. When used in this Act—

"(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having

the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term "representatives" includes any individual or labor organization.

"(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

"(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"(12) The term "professional employee" means—

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a);

"(13) In determining whether any person is acting as an "agent" of another person so as to make such other

person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

"• • •

"SEC. 8.

• • • • • •

"(b) It shall be an unfair labor practice for a labor organization or its agents—

• • • • •

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;"

APPENDIX O

The Florida Transportation Act, Chapter 351, Florida Statutes, 1965 and 1967, 13A F.S.A. 351.01-351.30, Are as Follows:

CHAPTER 351

DUTIES OF RAILROADS IN OPERATING TRAINS

351.01 To stop at crossings.
351.02 Must stop train for physician to get off; penalty.
351.03 To post sign and ring bell at road crossings.
351.04 Penalty for violating regulation.
351.05 Locomotives to be equipped with certain headlights; penalty.
351.06 Fixing hours for labor for trainmen.
351.07 Leave of absence for employees holding governmental offices.
351.08 Reinstatement; damages.
351.09 Demand for freight, when prohibited.
351.10 Contracts for sale of railroad.
351.11 Record of contract.
351.12 Freight notice.
351.13 Depot contract.
351.14 Duty of railroad companies with crossing lines.
351.15 Shipping of freight.
351.16 To receive cars from connecting lines.
351.17 Recovery of damages.
351.18 Duty of state attorney and judge.
351.19 Penalty for not complying with laws relating to transfer of freight to other roads.
351.20 Blacklisting of discharged employees prohibited; penalty; written statement of reasons to be furnished.
351.21 Company responsible for acts of its agents.
351.22 Duties of persons, employers and corporations.
351.23 Employees to have a statement on demand.
351.24 Companies affected.
351.25 No charge for placing cars.
351.26 Penalty for violations of § 351.25.

351.27 Railroads to allow dredges in Everglades to pass right of way without charge.
351.28 To maintain drawbridges.
351.29 Penalty for violation of §§ 351.27 and 351.28.
351.30 Crossing signs and signboards.

351.01 *To stop at crossings.*—Every train of passenger cars, of freight cars drawn by one or more locomotives, and every street car, propelled by steam, electricity, compressed air, or other power, upon railway track, shall come to a full stop before arriving at or crossing the track of another railroad or street car railway track within fifty feet thereof, and the train or street car, as the case may be, arriving at such crossing first shall move on and cross first; and every such train or street car shall also slow down to a speed of not more than four miles an hour before running on or crossing the draw of any bridge over a stream which is regularly navigated by vessels; provided, however, that whenever the lines of two railroads cross each other on the same grade in this state, the trains shall be brought to a full stop at least fifty feet before reaching the crossing. But the foregoing shall not apply where the crossing is equipped with signal lights or semaphores or other safety appliances which shall indicate that the train may cross in safety, or where a flagman or watchman is stationed and he signals that the train may cross in safety.

351.02 *Must stop train for physician to get off; penalty.*—Any conductor of any train, who shall refuse to stop his train at the request of a physician who has been summoned to attend a patient, a sufficient length of time to permit such physician to get off at such regular or flag station, shall be fined for every such offense not more than one thousand dollars.

351.03 *To post sign and ring bell at road crossings.*—Every railroad company, whenever its track crosses a highway, shall put up large sign boards at or near said crossing with the following inscription in large letters on both sides of the boards: Look out for the cars! In

all incorporated cities and towns the said companies shall cause the bell on the engine to be rung before crossing any of the streets of a city or town, and their trains shall not go faster, through any of the traveled streets of a city or town, than at the rate of twelve miles per hour. This requirement for posting signs shall not apply to railroad crossings having signs as required by § 317.455.

351.04 *Penalty for violating regulation.*—In case any railroad or canal company, or its agents, servants or employees, shall neglect or refuse to comply with any of the provisions of this chapter, or of chapters 352 and 353, such railroad or canal company shall, for each or every violation, or refusal, unless otherwise provided, forfeit and pay the sum of fifty dollars, said penalty to be collected by suit, and to be paid into the county treasury of the county where such action is brought, for the benefit of the school fund.

351.05 *Locomotives to be equipped with certain headlights; penalty.*—All railroad locomotives operated in this state in the service of drawing passenger or freight trains shall be equipped with a first class headlight the illuminating source of which shall consist of an electric incandescent lamp of not less than two hundred watts rating, and with suitable reflector, which headlight shall be kept in good condition and used by those operating such railroad locomotives. Any person who shall fail to so equip his locomotives used in drawing passenger or freight trains, as herein required, or shall operate and use a locomotive in drawing passenger or freight trains not equipped with a headlight as required by this section, shall be guilty of a misdemeanor and shall upon trial and conviction be fined not more than $1,000.00 or imprisoned not exceeding 12 months.

351.06 *Fixing hours for labor trainmen.*—No railroad doing business in this state shall require or permit its employees who are engaged in the business of operating its trains over its roads, to make runs of over thirteen

hours, or make runs aggregating more than thirteen hours in any twenty-four hours, except when such train is detained by reason of casualty, or other cause, from reaching its destination on schedule time, and no conductors nor engineers, after having been on a run or runs for as much as thirteen hours out of every twenty-four hours, shall be required to again go on duty until after eight hours' rest, except in the case above stated. No employee of any railroad company shall be deprived of his right to recover damages for personal injury by reason of the fact that he, at the time of such injury, was making a run of more than thirteen hours in twenty-four hours, or had gone on duty after a thirteen hours' run, or runs aggregating thirteen hours before eight hours' rest.

Any railroad violating any of the provisions of this section shall be subject to a forfeiture of not less than fifty nor more than five hundred dollars; all forfeitures collected under the provisions of this section shall be paid into the state treasury to the credit of the school fund.

351.07 *Leave of absence for employees holding governmental offices.*—When any regular or part-time employee of any railroad company or railroad corporation operating and doing business in the state shall be elected or appointed to any federal state, county or municipal office, such railroad company or railroad corporation shall, upon application of such employee, grant a leave of absence to such employee for such period of time said employee holds or occupies such office or position, and such leave of absence shall in no wise impair, prejudice or deprive said employee of the seniority ranking held by him at the time of the granting of such leave of absence.

351.08 *Reinstatement; damages.*—Upon the expiration or termination of any such term of office or appointment to any federal, state, county, or municipal office or position, any such regular or part-time employee, upon giving a written notice to such railroad company or railroad corporation, and upon passing such physical and mental examinations

as is customarily required, shall be entitled forthwith to reinstatement to the position or employment held by him at the time of such election or appointment, and upon failure or refusal of any railroad company or railroad corporation to immediately reinstate said employee, he shall have and may maintain a civil action for damages against such railroad company or railroad corporation for any salaries or wages which would have been due him from the date of such notice and of the passing of such examination, had he been re-employed as required hereby; in such action, should the plaintiff recover he shall also be entitled to recover a reasonable attorney's fee as compensation for his attorney.

351.09 *Demand for freight, when prohibited.*—No common carrier in this state shall demand of any consignee the freight on goods, wares and merchandise not delivered or ready to be delivered, as a condition precedent to the delivery of goods, wares or merchandise in the custody of said common carrier, at the point of destination. And upon a tender by any consignee of the freight due upon any goods, wares or merchandise in the custody of such carrier at the point of destination it shall deliver the same.

Should any common carrier in this state violate the provisions of this section, it shall forfeit a sum in double the amount of the freight demanded on goods, wares or merchandise not delivered or ready to be delivered, to be collected by suit before any competent court having jurisdiction of the amount.

*351.10 *Contracts for sale of railroad.*—In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller

* Note—The new Uniform Commercial Code by § 1, ch. 65-254 repeals this section to become effective, January 1, 1967.

shall have and retain a lien thereon for the unpaid purchase money. In any contract for the leasing or hiring of such property it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

(1) The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgement of deeds, and in the same manner as deeds are authorized or proved.

(2) Such instrument shall be filed for record in the office of the secretary of state of this state.

(3) Each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

351.11 *Record of contract.*—The contracts under § 351.10 shall be recorded by the secretary of state, in a book of records to be kept for that purpose. On payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its

assignee, and recorded as aforesaid. The secretary of state shall be entitled to a fee for such services of said contracts and each of said declarations, and a fee of one dollar for noting such declarations on the margin of the record. This section shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to herein, and any such contract heretofore made may, upon compliance with the provisions of this section, be recorded as herein provided.

351.12 *Freight notice.*—All common carriers engaged in the transportation and delivery of freight in this state, immediately upon receipt of any freight at the point to which it may be consigned, shall notify in writing the consignee of the same. Such common carriers shall make no charges for the storage of such freight until after the expiration of three days after such notice is given as hereinbefore provided. Such common carriers shall be liable for said freight.

351.13 *Depot contract.*—Whenever any railroad company in this state obtains from any person any grant of land, money, right of way or other thing of value on condition that the said railroad company shall construct a depot, side track or warehouse at any point or locality on the line of its road, such condition shall be held and deemed a contract, and specific performance of the same shall be decreed on bill in chancery filed by the person entitled thereto in the circuit court. If any railroad company shall fail or refuse to obey any decree rendered pursuant to this section, it shall be the duty of the judge of the circuit rendering the decree, on the failure or refusal of the railroad company to obey the said decree being made known to him, to appoint a receiver for the railroad of said railroad company, who shall thereupon carry out the terms of the decree out of such funds as may come into his hands as receiver.

351.14 *Duty of railroad companies with crossing lines.*—All railroad companies in this state crossing or meeting

each other at any point shall construct such switches, side-tracks and connections as will enable them to transport cars to and from each other's lines; and the expense of such construction shall, unless otherwise provided, be borne equally by such connecting lines of railroad.

351.15 *Shipping of freight.*—All railroad companies or other common carriers doing business in this state shall ship all freight received by them by such routes, and deliver the same to such connecting lines as the shippers may direct; and no railroad company or other common carrier shall refuse to receive any freight because it is billed by the shipper by any particular route; and provided, that no railroad company, nor other common carrier, shall charge any higher rate for delivering freight to a connecting line than would be charged by said company for delivering freight to individuals at the place where such connecting road or common carrier receives such freight.

351.16 *To receive cars from connecting lines.*—All railroad companies or other common carriers shall receive from connecting lines cars loaded with freight, or empty cars, and transport the same to their destination, or to such other connecting line as they may be consigned to, and return such cars to the connecting line from which they are received, and they shall also deliver to connecting lines cars loaded with freight, or empty cars, as they may be consigned; and no railroad company in this state shall charge or collect any higher rate of freight or wheelage than would be charged for transporting and delivering freights to individuals between the point of receipt and the point of delivery.

351.17 *Recovery of damages.*—If any person shall be damaged by the refusal or failure of any railroad company to obey the provisions of §§ 351.14-351.16, such person shall, upon suit brought, recover from the railroad company so violating said sections damages in full of the amount of loss actually incurred, all costs, charges and reasonable attorney's fees.

351.18 *Duty of state attorney and judge.*—If any railroad company shall fail or refuse to comply with the provisions of § 351.14, the state attorney of the judicial circuit in which is situated the lines of railroad where the action is attempted, shall institute suit against the offending company in the circuit court, and on the facts being proven the judge of the circuit court shall render a decree requiring a compliance with the conditions of § 351.14, and if the railroad company shall fail or refuse to obey said decree, the judge of the circuit court, upon the fact of such refusal being made known to him, shall appoint a receiver for such road, who shall have such side-tracks, switches and connections made as may be necessary, conforming to the rules of said road in placing danger signals, putting in switches and passing trains during the construction of such work; and the state shall not be liable for any damages from accident caused by and during the construction of said work. When the aforesaid rules have been complied with, the cost of the construction of the same shall be a lien on said road paramount to all others; provided, that all costs, charges and a reasonable fee for the state attorney shall be decreed against the railroad company in the cases where a decree is rendered against said company.

351.19 *Penalty for not complying with laws relating to transfer of freight to other roads.*—If any person, agent or employee of any railroad company, or other common carrier, shall violate or refuse to obey the provisions of §§ 351.14-351.18, such officer, agent or employee of such railroad company or other common carrier shall be fined not less than two hundred and fifty dollars, nor more than one thousand dollars.

351.20 *Blacklisting of discharged employees prohibited; penalty; written statement of reasons to be furnished.*—

If any railroad company or other corporation doing business in this state, or any person, agent or employer of any such company or corporation, after having discharged any

employee from the service of any such company or corporation, shall attempt to prevent by word or writing, sign or other means, directly or indirectly, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent, employer, company or corporation shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars or less than one hundred dollars, and such person, agent, employer, company or corporation shall be liable in damages to such discharged person, to be recovered by civil action; but this section shall not be construed as prohibiting any person, agent, employer, company or corporation from giving in writing to any other person, company or corporation to whom such discharged person has applied for employment a truthful statement of the reasons for such discharge; and shall furnish to such discharged employee, on his application, to such address as may be given by such discharged employee, within ten days after such application made as aforesaid, a true copy of any such written statement.

351.21 *Company responsible for acts of its agents.*—If any railroad company or other corporation doing business in this state shall authorize or permit, with its knowledge and consent, any of its officers, agents, employers or employees to commit either or any of the acts prohibited by § 351.20, such railroad company or corporation shall be liable in damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action.

351.22 *Duties of persons, employers and corporations.*—Any person, officer, agent, employer, company or corporation, after having discharged any employee from the service of any such company or corporation, upon written demand by such employee, shall furnish to him, within ten days from the application for the same, a full statement in writing of the cause or causes of his discharge, and if any such person, officer, agent, employer, company or corporation as aforesaid shall refuse within ten days after demand

as herein provided to furnish such statement to such discharged employee, it shall be ever after unlawful for any such person, officer, agent, employer, company or corporation to furnish any statement of the cause of such discharge to any person or corporation, or to in any way blacklist, or to prevent such discharged employee from procuring employment elsewhere, subject to the penalties prescribed in § 351.20. On the trial of any person, company or corporation for a violation of the provisions of §§ 351.20-351.24, any other person who may have authorized or permitted, with knowledge and consent as aforesaid, any such offense, or who may have participated in the same, shall be a competent witness, and be compelled to give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury in any matter to which he may have testified; and on the trial of any such person for any violation of said sections the prosecution shall have the authority and process of the court trying the case to compel the production in court, to be used in evidence in the case, of the books and papers of any such person, company or corporation, and a failure to produce the same, after such reasonable notice as the court may in each case provide, shall be a contempt of court, and punishable as such against the custodian or person, company or corporation having the control or in charge of such books and papers who shall fail to produce the same; provided, that such written cause of the discharge, when so made as aforesaid, at the request of such discharged employee, shall never be used as the cause for an action for slander or for libel, either civil or criminal, against the person or authority furnishing the same.

351.23 *Employees to have a statement on demand.*—Any person, company or corporation who has received any request or notice in writing, sign, word or otherwise from any person, company or corporation preventing or attempting to prevent the employment of any person discharged from

the service of either of the latter, shall, on demand of such discharged employee, furnish to such employee within ten days after such demand a true statement of the nature of such request or notice, and if in writing, a copy of the same, and if a sign, the interpretation thereof, with the name of the person, company or corporation furnishing the same, with the place of business of the person or authority furnishing the same; and a violation of this section shall subject the offender to all the penalties, civil and criminal, provided by this chapter.

351.24 *Companies affected.*—The provisions of §§ 351.20-352.23 shall apply to and prevent, under all the penalties in this chapter, railroad companies or corporations under the same general management and control but having separate divisions, superintendents or master mechanics, master machinists, or similar officers, for separate or different lines, their officers, agents and employees, from preventing or attempting to prevent the employment of any such discharged person by any other separate division or officer or agent or employer of any such separate railroad line or lines.

351.25 *No charge for placing cars.*—No charge whatever shall be made by a railroad having the line haul for placing for loading, an empty car at any warehouse or other point on its line or any side track or spur connected therewith or for switching the loaded car to or from the same either for delivery or for transportation for intrastate shipment; it being the purpose of this section to require one placement of a car for loading or unloading upon a side track and its removal in the opposite direction without any charge in addition to the charge for transportation or line haul.

351.26 *Penalty for violations of § 351.25.*—Any railroad, railroad company, or common carrier violating the provisions of § 351.25, shall thereby incur a penalty for each such offense of not more than five thousand dollars, to be fixed and imposed by the public service commissioners in

accordance with the provisions of § 350.28, and each charge made in violation hereof shall constitute a separate offense.

351.27 *Railroads to allow dredges in Everglades to pass right of way without charge.*—All railroad companies shall allow all dredges engaged in the work of constructing canals in the Everglades of Florida to pass through their tracks and right of way without charge or expense.

351.28 *To maintain drawbridges.*—All railroad companies, when requested so to do by the board having in charge the drainage and reclamation of the Everglades of Florida, shall provide and maintain drawbridges, at their expense, over and across any of the canals provided for and used in connection with the drainage and reclamation of the Everglades of Florida.

351.29 *Penalty for violation of §§ 351.27 and 351.28.*—Any railroad company failing to comply with the provisions of § 351.27 or § 351.28 shall be subject to a fine of not more than one thousand dollars.

351.30 *Crossing signs and signboards.*—Whenever any railroad company has or may hereafter install at any grade crossing, signals of the automatic flash-light type which are approved by the Association of American Railroads and by the Federal Public Roads Administration, and which have the words "Railroad Crossing" on the side of said crossing signal facing the approach from the highway and which are located one on each side of the railroad track or tracks at a distance of not less than eight feet nor more than thirty feet from the nearest track measured from the gage of the nearest rail to the base of such signal light, then and in any such event, so long as said automatic signals are maintained in force and effect, it shall be unnecessary for railroad companies to comply with, and such railroad companies are herein and hereby relieved from the duty of complying with §§ 317.455 and 351.03 relating to signboards and crossing signs.

APPENDIX P

The Florida Restraint of Trade Laws, Chapter 542, Florida Statutes 1965 and 1967, 16 F.S.A. 542.01-542.12, Are as Follows:

CHAPTER 542

COMBINATIONS RESTRICTING TRADE OR COMMERCE

542.01 Definitions; trust, commodity.
542.02 Forfeiture of charter of domestic corporations for violations.
542.03 Dissolution proceedings instituted by attorney general, etc.
542.04 Foreign corporations violating chapter denied right to do business in state.
542.05 Combinations prohibited; penalty.
542.06 Sufficiency of indictment.
542.07 Rule of evidence.
542.08 Criminal liability of nonresident.
542.09 Daily penalty for continued violations.
542.10 Contract in violation of chapter void.
542.11 Officers authorized to subpoena witnesses to testify as to violations; testimony of witnesses.
542.12 Contracts in restraint of trade invalid; exceptions.

542.01 *Definitions; trust, commodity.*—

(1) A trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

(a) To create or carry out restrictions in trade or commerce, or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(b) To increase or reduce the price of merchandise, produce or commodity;

(c) To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce;

(d) To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state; or,

(e) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

Provided, however, that no agricultural or horticultural nonprofit cooperative association organized and incorporated under the laws of the state nor the members, officers, agents or employees thereof or any of them, as such, shall be deemed to be a trust, a combination in restraint of trade, an illegal monopoly or any attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed

to be a trust, or be considered illegal or in restraint of trade.

(2) As used in this chapter, the word commodity shall include any article, product, merchandise, thing of value, service or output of a service trade.

542.02 *Forfeiture of charter of domestic corporations for violations.*—Any corporation holding a charter under the laws of the state which shall violate any of the provisions of this chapter shall forfeit its charter and franchise, and its corporate existence shall cease.

542.03 *Dissolution proceedings instituted by attorney general, etc.*—For a violation of any of the provisions of this chapter by any corporation mentioned herein, the attorney general or any state attorney upon his own motion, and without leave or order of any court or judge, shall institute suit or quo warranto proceedings for the forfeiture of its charter rights and franchises and the dissolution of its corporate existence.

542.04 *Foreign corporation violating chapter denied right to do business in state.*—Every foreign corporation violating any of the provisions of this chapter is denied the right and prohibited from doing business within this state. The attorney general shall enforce this provision by injunction, or other proper proceedings, in the name of the state.

542.05 *Combinations prohibited; penalty.*—Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes:

(1) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(2) To increase or reduce the price of merchandise, produce or commodities;

(3) To prevent competition in the manufacture, making, transportation, sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce;

(4) To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state; or,

(5) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected; or any person who shall aid or advise in the creation or carrying out of any such combination, or knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, as principal, manager, director, agent, servant, or employee, or in any other capacity, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary for

not less than one nor more than ten years. Each day during a violation of this provision shall constitute a separate offense.

Provided, however, that no agricultural or horticultural nonprofit cooperative association organized and incorporated under the laws of the state, nor the members, officers, agents or employees thereof, or any of them as such, shall be deemed to be a combination prohibited under the meaning of this section nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to have created a combination prohibited herein.

542.06 *Sufficiency of indictment.*—In any indictment or information for an offense named in this chapter, it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with, or in pursuance of it, without giving its name or description, or how, when, or where it was created.

542.07 *Rule of evidence.*—In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists, and that the defendant or defendants belonged to it or acted for or in connection with it, without proving all members belonging to it, or providing or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. General reputation may be given in evidence in all prosecutions of alleged combinations under the provisions of this chapter.

542.08 *Criminal liability of nonresident.*—Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons violating its provisions, whether within or without this state.

542.09 *Daily penalty for continued violations.*—Every person who shall in any manner violate any of the provisions of this chapter, shall, for each day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state in any county where the offense is committed. The attorney general and state attorneys and county solicitors shall prosecute for and recover the same.

542.10 *Contract in violation of chapter void.*—Any contract or agreement in violation of the provisions of this chapter shall be void and not enforceable either in law or equity.

542.11 *Officers authorized to subpoena witnesses to testify as to violations; testimony of witnesses.*—Any court, officer, or tribunal having jurisdiction of the offense defined in this chapter, or the attorney general or any state attorney or county solicitor or grand jury, may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of this chapter about which he may testify fully and without reservation.

542.12 *Contracts in restraint of trade invalid; exceptions.*—

(1) Every contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind, otherwise than is provided by subsection (2) and (3) hereof, is to that extent void.

(2) One who sells the good will of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent or employee may agree with his employer, to refrain from carrying on or soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any

person deriving title to the good will from him, and so long as such employer continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

APPENDIX Q

The Florida Labor Relations Law, Chapter 447, Florida Statutes, 1965 and 1967, 15 F.S.A. 447.01-447.16, is as follows:

CHAPTER 447

LABOR ORGANIZATIONS

447.01 Regulating labor unions; state policy.
447.02 Definitions.
447.03 Employees' right of self-organization.
447.04 Business agents; licenses, permits, etc.
447.05 Initiation fees; limitation.
447.06 Registration of labor organizations required.
447.07 Records and accounts required to be kept.
447.08 Rights of members in armed forces.
447.09 Right of franchise preserved; penalties.
447.10 Attorney general; duties.
447.11 Actions and suits; labor organizations as parties.
447.12 Fees for registration with secretary of state.
447.13 Right to strike preserved.
447.14 Penalties.
447.15 Federal regulations recognized.
447.16 Applicability of chapter when effective.

447.01 Regulating labor unions; state policy.—

(1) Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense of the legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their

officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth.

447.02 Definitions.—The following terms, when used in this chapter, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment, and recognized by one or more employers as a unit of bargaining.

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

(a) The issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or

(b) In soliciting or receiving from any employer any right or privilege for employees.

447.03 Employees' right of self-organization.—Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

447.04 Business agents; licenses, permits, etc.—

(1) No person shall be granted a license or a permit to act as a business agent in the state:

(a) Who has not been a citizen of and has not resided in the United States for a period of more than five years next prior to making application for such license or permit;

(b) Who has been convicted of a felony and has not had his civil rights restored.

(c) Who is not a person of good moral character; and,

(2) Every person desiring to act as a business agent in this state shall, before doing so, obtain a license or permit by filing an application under oath therefor with the secretary of state, accompanied by a fee of one dollar and a full set of fingerprints of the applicant taken by a law enforcement agency qualified to take fingerprints. There shall accompany the application a statement signed by the president and the secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The secretary of state shall hold such application on file for a period of thirty days, during which time any person may file objections to the issuing of such license or permit.

The secretary of state may also conduct an independent investigation of the applicant and if objections are filed, he may hold or cause to be held a hearing in accordance with rules and regulations prescribed by the hereinafter named board; the objectors and the applicant shall be permitted to attend said hearing and present evidence.

(3) After the expiration of the thirty-day period, regardless of whether or not any objections have been filed, the secretary of state shall submit the application, together with all information that he may have, including but not limited to, any objections that may have been filed to such application, any information that may have been obtained pursuant to an independent investigation and the results of any hearing on the application, to a board to be composed of the governor as chairman, the secretary of state, and the state superintendent of public instruction. If a majority of the board shall from a review of the information furnished to it by the secretary of state, find that the applicant is qualified, pursuant to the terms of this chapter,

then the board shall by resolution, authorize and direct the secretary of state to issue such license or permit, and said license or permit shall run for the calendar year for which issued, unless sooner surrendered, suspended, or revoked.

(4) License and permits may be renewed by the secretary of state on a form prescribed by him; however, if any such license or permit has been surrendered, suspended, or revoked during the year, then such applicant must go through the same formalities as a new applicant.

447.05 Initiation fees; limitation.—Labor unions or labor organizations shall not charge an initiation fee in excess of the sum of fifteen dollars; provided, that initiation fees in effect on January 1st, 1940, may be continued.

447.06 Registration of labor organizations required.—

(1) Every labor organization operating in the state shall make a report in writing to the secretary of state annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the secretary of state may prescribe, and shall show the following facts:

(a) The name of the labor organization;

(b) The location of its office;

(c) The name and address of the president, secretary, treasurer and business agent.

(2) At the time of filing such report it shall be the duty of every such labor organization to pay the secretary of state an annual fee therefor in the sum of one dollar.

447.07 Records and accounts required to be kept.—It shall be the duty of any and all labor organizations in this state to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any

member of such labor organization shall be entitled at all reasonable times to inspect the books, records and accounts of such labor organization.

447.08 Rights of members in armed forces.—Any employee who is a member of any labor organization who, because of services with the armed forces of the United States, during time of war or national emergency, has been unable to pay any dues, assessments or sums levied by any labor organization, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any labor organization to which he belonged.

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in § 447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

(14) To solicit advertising in the name of a labor organization without the written permission of such organization.

(15) To undertake through the medium of a card, circular, pamphlet, newspaper or any other medium whatsoever, or by any holding out to the public as officially representing a labor organization without the written authority

or contract with such labor organization. Any publication claiming endorsement by a labor organization shall list in such publication the name and address of the organization or organizations endorsing same.

447.10. Attorney general; duties.—An action may be commenced by the attorney general of the state on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this chapter. Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without a jury and the rules of civil procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

447.11. Actions and suits; labor organizations as parties.—Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this state. All process, pleadings and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

447.12 Fees for registration with secretary of state.—All fees collected by the secretary of state hereunder shall be paid to the state treasurer and credited to the general fund.

447.13 Right to strike preserved.—Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work;

nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech.

447.14 Penalties.—Any person or labor organization who shall violate any of the provisions of this chapter shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

447.15 Federal regulations recognized.—All railway labor organizations and members thereof shall be exempt from all of the provisions of this chapter as long as they are regulated by act of congress.

447.16 Applicability of chapter when effective.—Any labor business agent licensed on July 1, 1965, may renew such license each year on forms provided by the secretary of state without submitting fingerprints so long as such license or permit has not expired, been surrendered, suspended or revoked. The fingerprinting requirements of this act shall become effective for new applicants for labor business agent license immediately upon this act becoming a law.